



Manual of Administrative Procedures

MAP 22-6

August 10, 2007

Errors and Omissions Cost-recovery Procedure

Document history

Identification, Assessment, and Documentation

1. When a problem is discovered in the field and the Construction Project Manager determines the cause is attributed to a plan error/omission, the Design Project Manager is notified to begin developing a solution. If an Allotment is required to effect the correction, net design costs (if required) are itemized in the estimate. If a Supplemental Agreement is to effect the correction, the net design costs are itemized in the estimate.
2. All Supplemental Agreements and Allotment Requests including costs are summarized in a quarterly report that is distributed to the Director of Preconstruction, Director of Field Districts/Operations, Design Office Administrators review.
3. For each error/omission identified in the quarterly report which redesign costs exceed a threshold amount of \$20,000 for a single occurrence (an amount of \$50,000 for cumulative occurrences), the Office Administrator (or his designee) should develop a detailed report that contains the following information:
 - general contract information (consultant, design service contract, construction contract, project manager, etc.);
 - a summary of the problem;
 - a summary of the solution implemented in the field;
 - GDOT's accountability related to the error and omission; and
 - a recommendation to pursue or not pursue cost-recovery actions against the consultant.

The Office Administrator will forward the information (within three months of receiving the quarterly report) to the Office of Engineering Services to develop a consolidated report of all Supplemental Agreements processed due to plan errors/omissions. The consolidated report will be distributed to the Chief Engineer, FHWA, and the Consultant Performance Review Committee (CPRC). The projects the Office Administrator recommends cost-recovery actions be taken will

be reviewed by the CPRC.

Evaluation of Cost Recovery

1. The CPRC is comprised of the following personnel: Director of Preconstruction, Director of Operations, Director of Construction; Director of Legal Services, Director of Administration, and a FHWA representative. The Directors of Preconstruction, Operations, and Construction will be voting members. The CPRC mission will be to review all recommendations for cost-recovery actions. Recommendations reviewed and not supported by the CPRC will be returned to the Office Administrator with explanation.
2. In reaching a decision, the CPRC will consider the following criteria:
 - The CPRC will verify the threshold cost of more than \$20,000 or more (cumulative costs of \$50,000 for multiple occurrences) has been sustained. The determination will ensure the cost effectiveness of going forward with cost-recovery actions. However, the CPRC will have the authority to make a finding that cost-recovery will be initiated regardless of amount of the loss.
 - The CPRC will determine if the plan error/omission was due to negligence on the part of the consultant. If so, the cost-recovery amount will include the cost for redesign and additional construction costs resulting from the error/omission. When making this determination, the CPRC will review the obligations (such as the Scope of Work) agreed to by the consultant in the contract.
 - The CPRC will take into account any mitigating circumstances relating to the consultant, such as an analysis of the Department's responsibility to have identified the plan error/omission during project plan development.
3. All cost-recovery actions approved by the CPRC will be forwarded to the Chief Engineer for approval. Regardless of the disposition of the CPRC, documentation of the consultant's performance will be forwarded to the Office of Consultant Design for record keeping.

Cost Recovery Approach

1. Once the Chief Engineer approves the recommendation, the Office Administrator will be responsible for notifying the consultant of Department's decision. The Office Administrator also will have the responsibility to enter into negotiation discussions, present the facts surrounding the plan error/omission, and to attempt to resolve the issue without formal legal action. The Office of Legal Services, in conjunction with the State Attorney General's Office, will provide guidance and direction to ensure any cost-recovery negotiations do not jeopardize the Department's ability to recover the costs.
2. If negotiations are successful and a mutual resolution is reached, the Office Administrator will obtain approval from the Chief Engineer and implement the solution.
3. If the consultant and the Department are unable to mutually agree during negotiation, non-binding mediation may be considered to aid in reaching a resolution. The Department and the consultant shall agree on a mediator. The Department and the consultant shall share the costs and expenses of the mediator on a pro-rata basis. The mediator shall be required to have at least six years of experience in dispute resolution of claims involving the design and/or construction process. Within 10 days after appointment of the mediator, the Department and the consultant shall agree

on the rules for, and the scope of, the mediation phase.

The mediation phase shall begin upon expiration of the negotiation phase and will last 120 days, unless concluded earlier or extended by mutual agreement of the Department and the consultant. Upon expiration of the 120-day period (or otherwise extended by mutual agreement), the Department may pursue whatever remedies are available, including litigation.

In the event the representatives of the Department and the consultant agree to resolve the cost-recovery claim, the agreement shall be in writing.

4. If cost-recovery negotiations are successful, two methods of repayment will be available to the consultant, (1) direct payment to the Department, and/or (2) pro-bono design services. If cost-recovery negotiations fail, the Office of Legal Services will act as a liaison between the Department and the consultant.

Consultant Performance

All occurrences of plan errors/omissions should be documented and be considered as part of the consultant's past performance on future contracting opportunities. A consultant's performance documentation file should include the CPRC's recommendations regarding pursuit of cost-recovery actions, as well as the final resolution of those occurrences that proceed to cost recovery.

The Office of Consultant Design will maintain a consultant performance database which includes information on plan errors/omissions.

The procedure concerning errors and omissions may be read in [TOPPS 4020-4](#).

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